

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2176 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHANBHAI CHHOTUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR RS SANJANWALA for Petitioners
Mr. S.P. Dave, APP for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 08/10/98

ORAL JUDGEMENT

By this application, the petitioners, who are the accused before the Court of Judicial Magistrate (F.C.) at Chikhli in Criminal Case No.53 of 1997, pray for quashing of that Criminal Case invoking the powers under Section 482 of the Criminal Procedure Code.

2. Necessary facts may in brief be stated. It is the case of the opponent No.2 who is the complainant before the learned Judicial Magistrate (F.C.) at Chikhli

that the petitioners No. 2, 3 & 4 along with one Natvarbhai Bhimabhai Patel filed Regular Civil Suit No. 45 of 1997 in the Court of the Civil Judge (J.D.) at Chikhli against him and 7 others. It is also the case of opponent No.2 that the plaint as well as the Vakalatnama in the suits were in fact not signed by Natvarbhai Bhimabhai Patel. When inquiry was made, he was informed that the plaint and Vakalatnama were also not signed by Natvarbhai Bhimabhai Patel. With a view to take over the administration of the trust illegally and fraudulently the petitioners in conspiracy with each other forged the signature of Natvarbhai Bhimabhai Patel and filed the suit. They thereby committed the offences punishable under Section 120B, 406, 465, 466 & 471 of the Indian Penal Code. He therefore filed the complaint directly before the learned Judicial Magistrate (F.C.) at Chikhli who was pleased to send the complaint to the police for investigation under Section 156(3) of the Criminal Procedure Code passing necessary order. The police then investigated into the matter and at the conclusion of the investigation filed the chargesheet in the Court of the learned Judicial Magistrate (F.C.) at Chikhli. Having come to know about filing of the chargesheet against them, the petitioners have preferred this application for quashing of the complaint invoking the powers under Section 482 of the Criminal Procedure Code.

3. A notice was issued initially on 16th June 1998 but the opponent No.2 did not appear. Hearing the parties on 24th June 1998 Rule was issued. Though the Rule was served on the opponent No.2 he has not preferred to appear before this Court for making necessary submissions.

4. The learned advocate representing the petitioner today tendered the certified copy of the written statement along with the affidavit filed by the evidence in Regular Civil Suit No. 45/97 wherein the plea about document having been forged and used in the proceeding has been taken. The same is taken on record. It is the contention of the petitioners' learned advocate that the complaint is not at all tenable in view of Section 195(1)(b)(i) of the Criminal Procedure Code read with Section 340 because when the forged documents are now the part of the record of Regular Civil Suit No. 45 of 1997, the complaint if at all is to be filed can be lodged only by the ld. Civil Judge. As in this case, the opponent No.2 has lodged the complaint, it is hit by Section 195(1)(b) of the Criminal Procedure Code, consequently the same is required to be quashed.

5. The short question that arises for consideration is who should initiate the criminal action against the wrong-doer if the forged documents are used in any proceeding before the Court and thereby offence punishable under Section 467 or 471 or 465 is alleged to have been committed. A similar question arose before the Supreme Court in the case of Gopalakrishna Menon and another vs. D. Raja Reddy and another - AIR 1983 S.C. 1053 wherein it is held;

"The offence which is made punishable under Section 467 is in respect of an offence described in Section 463. Once it is accepted that Section 463 defines forgery and Section 467, punishes forgery of a particular category, the provision in Section 195(1) (b) (ii) of Criminal P.C. would immediately be attracted and on the basis that the offence punishable under Section 467 is an offence described in Section 463, in the absence of a complaint by the Court the prosecution would not be maintainable. Consequently the prosecution of the persons who alleged to have produced the forged money receipt in civil Court, for offences punishable under Secs. 467 and 471 read with Section 34 on the basis of a private complaint and in the absence of a complaint from the appropriate Civil Court where the alleged fraudulent money receipt has been produced, would not be sustainable because if the prosecution is allowed to continue serious prejudice would be caused to them and they would be called upon to face a trial which would not be sustainable."

It is, thus, held, that in respect of the forged document produced in the civil proceeding, no complaint thereof can be initiated by any person and allowed to be continued as it would cause serious prejudice to the accused and will have to face the trial which would not be sustainable in view of Section 195 (1) (b) (i) of the Criminal Procedure Code because the Court itself would be competent to lodge the complaint. In view of such decision, the complaint filed against the petitioner relating to the forged document alleged to have been produced in the suit is required to be quashed as it is not open to the opponent No.2 to initiate the action. If at all the learned Civil Judge (J.D.) deems it just and appropriate, it would be open to him to initiate the proceeding undergoing the legal formalities. This Court has also taken the likewise view in the case of

Miteshchandra Manilal & Ors Vs. State of Gujarat & Ors 1997 (2) G.L.H. 637 holding that if the criminal action is not initiated by the Court in connection with the forged document produced in the proceeding before it and if the police has investigated into the offence and filed the chargesheet, it would be of no value as cognizance of the chargesheet filed cannot be entertained by the Court because, in that case, the bar of Section 195, Criminal Procedure Code would be attracted.

6. Faced with such situation, Mr. S.P. Dave, the learned Addl. Public Prosecutor contends that the provision of Section 195 of the Criminal Procedure Code would not come in the way of the police vested with statutory powers to investigate into the complaint lodged in the police station or sent by the Magistrate for inquiry under Section 156(3) of the Criminal Procedure Code. In support of his such submission, he relies upon the decision of the Supreme Court rendered in the case of State of Punjab Vs. Raj Singh & Anr. - 1998 (1) Crimes 122 (SC). The contention based on the decision of the Supreme Court loses the value because the Supreme Court has, in another case of Arvindervir Singh Vs. State of Punjab - J.T. 1998 (5) S.C. 329 has taken a contrary view, referring its decision cited by Mr. Dave, the learned APP, holding that while making the law clear in Raj Singh & Another's case (Supra), the Court was not unaware of the provisions contained in Section 195 and 340 Cr.P.C. and, therefore, could not have directed the CBI to file the challan for the offences found to have been committed and that cognizance of the offences under Sections 193, 194, 211 and 218 IPC should be taken by the Designated Court at Chandigarh, and could not have directed that Court to try to those offences. The CBI misunderstood the direction given by the Court. In the absence of the complaint under Section 195 Cr.P.C., the Designated Court was not entitled to take cognizance. In such cases, the cognizance can be taken only if the criminal actions are initiated in consonance with Section 195 Cr.P.C. When the Supreme Court has, thus, taken a different view and that too consistent with the view which is already taken in Gopalkrishna Menon & Another's case (Supra), the contention advanced on behalf of the prosecution fails.

7. The complaint is also filed relating to the offences punishable under Section 406 of the IPC alleging that the petitioners committed the offences of breach of trust. Reading the complaint, no where I find that there was the entrustment or dominion over the property and the petitioners dishonestly misappropriated and converted the

same to their own use. To file a suit for declaratory or injunctive relief, so as to protect the interest of the trust would not amount to conversion of the trust property dishonestly and misappropriating the same. The offence punishable under Section 406 is, therefore, not prima facie made out, even though the case alleged in the complaint is accepted ex facie.

8. For the aforesaid reasons, the complaint lodged by respondent No.2 is not maintainable and the same is required to be quashed. The application is, therefore, allowed. The Criminal Case No. 53 of 1997, at present pending in the Court of the ld. Judicial Magistrate (F.C.) at Chikhli against the present petitioners, is hereby quashed. Rule accordingly made absolute.

.....
(rmr).